

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MERCK & CO., INC.,

Plaintiff,

v.

C.A. No. 06-310-GMS

TEVA PHARMACEUTICALS USA, INC.,

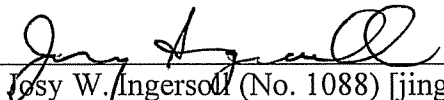
Defendant.

**DEFENDANT TEVA PHARMACEUTICALS USA, INC.'S MOTION UNDER
FED. R. CIV. P. 12(b)(6) TO DISMISS PLAINTIFF MERCK & CO., INC.'S
COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED**

Defendant Teva Pharmaceuticals USA, Inc. ("Teva"), by and through its undersigned counsel, hereby respectfully moves the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the Complaint of Plaintiff Merck & Co., Inc. (D.I. 1) for failure to state a claim upon which relief can be granted. The basis for this motion is more fully set forth in Teva's Opening Brief, filed contemporaneously herewith. A proposed form of Order is attached.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

May 31, 2006



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CERTIFICATE OF SERVICE

I, Karen L. Pascale, Esquire, hereby certify that on May 31, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send e-mail notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on May 31, 2006, I caused a copy of the foregoing document to be served on the above-listed counsel of record by e-mail [mgraham@mnat.com] and hand delivery, and on the following non-registered participants in the manner indicated below:

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v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant.

C.A. No. 06-310-GMS

ORDER

Defendant, Teva Pharmaceuticals USA, , Inc. ("Teva"), having moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the Complaint of Plaintiff Merck & Co., Inc. (D.I. 1) for failure to state a claim upon which relief can be granted, and the Court having considered the parties' submissions thereon,

IT IS HEREBY ORDERED this ____ day of _____, 2006, that Teva's motion to dismiss (D.I. ____) is GRANTED.

UNITED STATES DISTRICT JUDGE